tion of a speed regulation involves commission of an act *malum in se* (and statutes have been framed in such words), clearly homicide in violation of the statute could be held manslaughter without controverting the principle of *Commonwealth* v. *Adams*. Again in jurisdictions where only a slight degree of negligence will support a prosecution for involuntary manslaughter, a statute declaring a certain rate of speed negligent driving would be conclusive as to the gross negligence, while a statute making a certain rate of speed *prima facie* negligence, would be very strong evidence. All of which is true provided only the courts do not establish a system of automobile law apart from the general law of the land.

J. F. H.

INFANTS—LIABILITY FOR FRAUDULENT MISREPRESENTATION OF AGE—The settled policy of the law to shield infants from the consequences of contracts made before they have attained the maturity attendant upon becoming of age, frequently conflicts with the duty of the courts to afford a remedy to defrauded persons. It was early recognized, and now universally realized, that the protection, extended because of the reputed ignorance, lack of discretion and inexperience of mankind during legal infancy, "must be used as a shield and not as a sword."[1] Such a realization, however, has not resulted in the universal enunciation or adoption of principles to be applied where the conflict occurs. One of the most troublesome situations, in this branch of the law, arises where an adult is induced to contract with an infant by reason of the latter's misrepresentation of his age. "A multitude of undistinguishable distinctions"[2] has been made in order to reconcile policy and substantial justice. In a recent case,[3] the English Court of Appeals, believing that it was "necessary to safeguard the weakness of infants at large, even though here and there a juvenile rogue slipped through," refused to allow a recovery either in deceit, *quasi* contract, or equity by the plaintiff, a money lender, who, in reliance upon the defendant's fraudulent representation that he had reached his majority, had lent him four hundred pounds which had been expended for non-necessaries.

As long ago as 1665,[4] it was decided, and it is now held in England [5] and in many American jurisdictions,[6] that, although, as a general rule, an infant is liable for his torts, he is not answerable

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[1] Jennings v. Rundall, 8 T. R. 335 (Eng. 1799); *per* Lord Kenyon.

[2] Commander v. Brazil, 88 Miss. 668 (1906), per Calhoun, J.

[3] R. Leslie Limited, 111 Law Times, 106 (1914).

[4] Johnson v. Pie, 1 Sid. 258.

[5] Liverpool, *etc.*, Assoc. v. Fairhurst, 9 Ex. 422 (Eng. 1854).

[6] Brooks v. Sawyer, 191 Mass. 151 (1906); Monumental Building Assoc. v. Herman, 33 Md. 128 (1870); Kean v. Coleman, 39 Pa. 299 (1861); Nash v. Jewett, 61 Vt. 501 (1889).

in deceit for his fraudulent misrepresentation of age, which is the inducement of a contract. The reason is that the tort is not independent of the contract and that to allow a recovery in deceit would amount to enforcing the contract indirectly. An early American case,[7] which has been extensively followed,[8] allowed such a recovery, on the ground that the deceit was antecedent to the making of the contract. It is conceived, however, that the deceit is coincident with the formation of the contract, for the reason that the act, indicating reliance upon the fraudulent misrepresentations, which is a necessary element of actionable fraud, also completes the contract.

A person, who has made a contract in reliance upon a minor's false statement that he was of full age, may avoid it,[9] even before the time set for performance by the latter,[10] and recover in specie whatever the infant acquired under it, provided that it is still in his possession at the time of the rescission; or its value, if he disposes of it, after notice of avoidance has been given.[11] But, by the weight of authority, an infant is not required to return the consideration received by him as a condition precedent to avoiding his contract or to interposing successfully a plea of infancy in an action against him to enforce it.[12] However, if after disaffirmance, he retains the consideration, title is held to be re-vested in the other party, who may bring replevin or trover to recover it,[13] even from a third person.[14] If the infant does not restore the consideration in his possession, he cannot compel restitution.[15] But if, at the time of disaffirmance by either party, the infant has wasted or disposed of the consideration he is not required to make compensation for its value.[16] Property, received by the infant from a third person in exchange for property obtained under the contract which has been avoided, cannot be re-

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[7] Fitts v. Hall, 9 N. H. 441 (1838).

[8] Rice v. Boyer, 108 Ind. 472 (1886); Eckstein v. Frank, 1 Daly, 334 (N. Y. 1863).

[9] Badger v. Phinney, 15 Mass. 359 (1819); Nolan v. Jones, 53 Ia. 587 (1880); Robinson v. Berry, 93 Me. 320 (1899).

[10] Badger v. Phinney, *supra*, n. 9.

[11] Shaw v. Coffin, 58 Me. 254 (1870); Elwell v. Martin, 32 Vt. 217 (1859).

[12] Shipley v. Smith, 162 Ind. 526 (1904); Chandler v. Simmons, 97 Mass. 508 (1867); Craighhead v. Wells, 21 Mo. 404 (1855).

[13] Strain v. Wright, 7 Ga. 568 (1849). By a fiction that the law can imply a promise which an infant cannot avoid, a quasi-contractual action will lie, if the cause of action arose *ex delicto*. Cowern v. Nield (1912), 2 K. B. 419. 418.

[14] Neff v. Landis, 110 Pa. 204 (1885).

[15] Holmes v. Blogg, 8 Taunt. 508 (Eng. 1878); Johnson v. Northwestern, *etc.*, Co., 56 Minn. 365 (1894); *contra*, Morse v. Ely, 154 Mass. 458 (1891); Green v. Green, 69 N. Y. 553 (1877).

[16] Neilson v. International, *etc.*, Co., 106 Me. 104 (1909); Lake v. Perry, 95 Miss. 550 (1909).

covered by the person who contracted with the infant.[17] Where part of the money lent has been expended for necessaries, the infant is bound to repay to the lender the value of the necessaries so obtained.[18]

It is a general rule that an infant is not estopped by his fraud to set up infancy as a defence, or even in suing to recover consideration after disaffirmance by him.[19] However, some courts [20] hold the view that, if the deception arises, not merely from passive concealment of age, but from an actual fraudulent misrepresentation, upon which the other party relies and is deceived, the infant will be estopped to defend on the ground of infancy. It is clear that the latter courts are in effect validating the infant's contract. Where an infant requires the affirmative assistance of a court of equity, the doctrine of unclean hands applies and generally he will not be aided, unless he is prepared to do equity. Thus, where an infant by fraudulently misrepresenting his age, obtains from his trustee money due at his majority, he cannot compel the trustee to make another payment when he actually reaches twenty-one.[21] So, also, where an infant, by representing that he is at full age, induces the purchase of land belonging to him, he will be estopped to disaffirm the sale and to have his conveyance set aside by a court of equity.[22] The court in the principal case summarized the rule in equity as follows:[23] "When an infant obtained an advantage by falsely stating himself to be of full age, equity required him to restore his ill-gotten gains, or to release the party deceived from obligations or act in law induced by the fraud but scrupulously stopped short of enforcing against him a contractual obligation entered into while he was an infant even by means of a fraud." This principle is well illustrated in a case [24] where an infant fraudulently obtained promissory notes. He was required to restore them but a decree to pay their amount was refused. Similarly, where an infant obtained a lease of prop-

[17] Walsh v. Powers, 43 N. Y. 23 (1870); *contra*, Stocks v. Wilson (1913), 2 K. B. 235. The latter case is practically overruled by the decision in the principal case.

[18] Featherstone v. Betlejewski, 75 Ill. App. 59 (1897); Bedinger v. Wharton, 27 Gratt. 857 Va. (1876); *contra*, Stull v. Harris, 51 Ark. 294 (1888); Price v. Sanders, 60 Ind. 310 (1878).

[19] Tobin v. Spann, 85 Ark. 556 (1908); Sims v. Everhardt, 102 U. S. 300 (1880); Ledger, *etc.*, Assoc. v. Cook, 6 W. N. C. 428 (Pa 1879).

[20] Davidson v. Young, 39 Ill. 145 (1890); Cobbey v. Buchanan, 48 Neb. 391 (1896).

[21] Cory v. Geitken, 2 Madd. 40 (Eng. 1816). Where an infant falsely declared he was of age and induced a settlement with his guardian, a court of equity refused to set aside the settlement. Hayes v. Barker, 41 N. J. Eq. 630 (1886).

[22] Ryan v. Grouny, 125 Mo. 474 (1894); *contra*, even though the infant's grantee had conveyed to a third person. Buchanan v. Hubbard, 96 Ind. 1 (1889).

[23] P. 110.

[24] Clarke v. Cobley, 2 Cox, 173 (Eng. 1789).

erty, by misstating his age, he was required to give up the property, but not to pay for its use and occupation.[25]

The effect of the principal case in England is to allow the party defrauded by the infant to recover the property, surrendered in consequence of the contract, provided that it is still in the possession of the infant. The court specifically says[26] that there is no liability to account, since there is no fiduciary relation, and refuses to give a judgment *in personam* to pay an equivalent sum out of his present or future resources. It is probable that the effect of the principal case will be the abolishment of the present rule[27] in England, that if upon the bankruptcy of an infant, there be a claim arising out of a transaction, identical with the principal case, a sum is recoverable out of his estate, even though it is impossible to trace the specific funds borrowed. It is submitted that the result of the decision under discussion is inequitable and an undue hardship upon the plaintiff, whose sole remedy is to bring criminal prosecution for obtaining money under false pretenses.[28] Most courts in the United States have given similar immunity to infants, out of consideration for youthful improvidence in general. However, there is a noticeable tendency to deal with an infant's fraud, though connected with a contract, as with the fraudulent acts of adults.[29] The following extracts from a decision[30] which has taken the broadest view of the situation, is an excellent statement of a principle which, it is submitted, might well be universally adopted: "When a minor whose appearance justifies belief in such a statement induces a contract, which is reasonable, by false assurances that he is of the age of majority, he should be, and is estopped to repudiate it, and should be compelled to carry it out or to fully restore *status quo*, by returning what he got and making compensation if he has wasted it."

A. L. L.

INTERSTATE COMMERCE—PROSTITUTION—WHITE SLAVE ACT—The Act of Congress known as the White Slave Act[1] prohibits the interstate transportation of a woman or girl "for the purpose of

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[25] Lempriére v. Lange, 12 Ch. Div. 675 (1879).

[26] P. 110.

[27] *Ex parte* Unity Bank; *Re* King, 3 De G. & J. 63 (Eng. 1858).

[28] Com. v. Ferguson, 121 S. W. Rep. (Ky. 1909).

[29] Pemberton, *etc.*, Assoc. v. Adams, 53 N. J. Eq. 258 (1895), reached a conclusion contrary to the principal case, under precisely identical facts. See also Ferguson v. Bobo, 154 Miss. 121 (1876); Benedetto v. Holden, 21 Grant. Ch. 222 (Ont. 1894). Statutes have been passed in some states providing that an infant cannot disaffirm a contract induced by his misrepresentation as to his age. Ia. Code, §3190; Kan. Gen. Stat., §4184; Wash. Gen. Stat., §4582.

[30] Commander v. Brazil, *supra*, n. 2.

[1] Act of June 25, 1910, c. 395, 36 Stat. 825, U. S. Comp. St. Supp. 1911, p. 1343, which provides in part:

"That any person who shall knowingly transport or cause to be trans-